

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

Bail Appl..No. 6155 of 2007()

CRIME NO. 100/06 OF PAYYANNUR POLICE STATION)

PETITIONER/ACCUSED:

**ABDUL AZEEZ E.K., AGED 40 YEARS,
S/O. K.C.ABDULLA HAJI, K.C. HOUSE, THAYINERI,
P.O. PAYYANNUR-670 307, KANNUR DISTRICT.**

BY ADV. SRI.M.SASINDRAN

RESPONDENTS: COMPLAINANT & STATE:

- 1. STATE REPRESENTED BY THE
PUBLIC PROSECUTION, HIGH COURT OF KERALA.**
- 2. STATION HOUSE OFFICER
(CRIME NO.100 OF 2006, PAYYANNUR POLICE STATION),
KANNUR DISTRICT.**

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

**THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD
ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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R.BASANT, J

B.A.No.6155 of 2007

Dated this the 10th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment for the offence punishable under Section 376 I.P.C. The crux of the allegation against the petitioner is that while the defacto complainant was an employee under him, he had promised her to marry her and on that promise he had induced her to have sexual intercourse with him at various places. She admittedly knew that the petitioner was a married person. Investigation is now complete. Final report has already been filed. Committal proceedings has already been registered. The petitioner is required to appear before the learned Magistrate.

2. The learned counsel for the petitioner submits that the allegations against the petitioner are unfounded. A reading of the final report itself shows that there was no elements of rape in the alleged sexual intercourses between the petitioner and the defacto complainant. In any view of the matter, the petitioner does not deserve to endure the trauma of arrest and detention. He may be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the petitioner may be directed to surrender before the learned Magistrate and seek regular bail.

4. I have considered all the relevant inputs. Final report has been read over to me. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest and detention in execution of a process issued by a court after cognizance is taken. I am satisfied, in the facts and circumstances of the case, that this is a fit case where the petitioner deserves to be issued directions under Section 438 Cr.P.C in his favour. I shall not embark on a detailed discussion on the acceptability of the allegations or the credibility of the data collected. Suffice it to say that the case diary has been perused by me.

5. In the result, this Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioner shall appear before the learned Magistrate at 11 a.m on 17.10.2007. He shall be enlarged on regular bail on his executing a bond for Rs.50,000/- (Rupees Fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m and 5 p.m on 18.10.2007 and 19.10.2007. During this period, the investigator shall be at liberty to interrogate the petitioner in custody and get the potency test conducted if necessary;

iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

iv) If the petitioner were arrested prior to his surrender on 17.10.07 as directed in clause (1) above, he shall be released from custody on his executing a bond for Rs.50,000/- (Rupees Fifty thousand only) without any sureties undertaking to appear before the learned Magistrate on 17.10.07.

(R.BASANT, JUDGE)

rtr/-